

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS MARTEL,

Plaintiff,

No. CIV S-04-0014 DFL PAN P

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendant.

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. This matter is before the court on plaintiff's motion to compel a further response to requests 1 through 3 contained in his first request for production of documents, dated October 12, 2005, and requests 1 and 3 of his second request for production of documents dated November 16, 2005. Specifically, plaintiff seeks typed or written reports of CT scans taken of his head and face on varying dates, copies of prior citations or complaints filed against defendants for failure to provide proper medical care, a copy of a specific referral, copies of a ducat list from 1997, and copies of an operation report from 1991.

By the first series of requests at issue, plaintiff sought a copy of the CT scan of his midface/mandible taken on October 23, 1996, a copy of the CT scan of his head taken on November 16, 1994, and a copy of all CT facial scans taken through the years of 1996 through

1 2003.

2 With regard to the first request, review of the record shows that a copy of the CT
3 midface/mandible radiology report dated October 23, 1996 was provided to plaintiff with
4 defendants' opposition to the motion to compel. (Defendants Exhibit C to Opposition, at 1.)
5 Plaintiff's request is therefore moot and the court will not order further response to the first
6 request.

7 With regard to the second request, the record shows that plaintiff reviewed his
8 medical record without finding the document, and that thereafter the defendants reviewed the
9 record and also could not locate any report dated November 16, 1994. Defendants did provide
10 plaintiff with two similar reports dated in close temporal proximity to November 16, 1994 to
11 which plaintiff may have been referring. Accordingly, the court will not order further response to
12 the second request

13 Finally, with regard to the third request, defendants contend that they previously
14 made plaintiff's medical file available for his review and they have now served plaintiff with
15 copies of all reports of facial or sinus x-rays, CT scans, and MRI reports in plaintiff's medical
16 filed, several of which are attached to their opposition. (Defendants' Exhibit C.) No further
17 response to the third request will be required.

18 By the second set of requests at issue, plaintiff sought copies of any administrative
19 citations, disciplinary actions, and complaints filed against defendants from 1993 through 2003
20 for failure to provide a patient with proper care and a copy of the referral sent to Dr. Rose
21 Rabinow, the California Correctional Institution's offsite ENT physician, dated in May 2000.

22 Defendants objected to the first request on the grounds that the request was not
23 reasonably calculated to lead to discovery of admissible evidence because, even if such evidence
24 exists, evidence of prior wrong or acts is inadmissible to show action in conformity therewith.

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Fed. Evid. Code. § 404(b).¹ In his motion to compel, plaintiff states that he seeks this information in order to “establish a pattern of Defendants’ conduct” and to “show that plaintiff was not the only inmate who suffered.” (Plaintiff’s Motion to Compel Discovery (MTC), filed May 8, 2006, ¶ 16-17.) The information sought by plaintiff is inadmissible for this purpose. See Federal Rule of Evidence § 404(b). Defendants’ objection is well taken and the court will not order further response to this request.

With regard to the second request, defendants objected to this request on the ground that the request was moot because they could not ascertain the document to which plaintiff was referring and they had already provided plaintiff with his medical file. Defendants did locate an ENT consultation ordered by a different physician on September 16, 1999 and attached this document to their opposition. (Defendants’ Exhibit F.)

Plaintiff concedes that he reviewed seven volumes of his medical files and documents and did not find the document at issue. Moreover, defendants could not locate the document either, but did provide plaintiff with a copy of a similar order for ENT consultation dated in May 2000. For these reasons, no further response to the second request will be required.

In his motion to compel plaintiff further requests (1) “the Calif[ornia] Medical Facilities maxillofacial ducat list from January 1, 1997 through August 1997” and (2) “a complete copy of Defendants Dann’s December 13, 1991 Operation Report (CDC 7205) of plaintiff’s facial surgery.” (MTC ¶ 10.) Defendants oppose these requests on the grounds that neither of these requests was the subject of any properly served discovery request. Defendant’s opposition is well taken and the court will not order a response to these requests at this time.

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¹ Defendants raised other objections to this request which are not relevant to this court’s disposition of the instant motion to compel.

1 For all of the foregoing reasons, IT IS HEREBY ORDERED that plaintiff's May
2 8, 2006 motion to compel is denied.

3 DATED: July 27, 2006.

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5 
6 UNITED STATES MAGISTRATE JUDGE

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